IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE K.PADMANABHAN NAIR

FRIDAY, THE 10TH AUGUST 2007 / 19TH SRAVANA 1929

MACA.No. 388 of 2003(C)

OPMV.61/1997 of MOTOR ACCIDENT CLAIMS TRIBUNAL, PERUMBAVOOR

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APPELLANT/PETITIONER IN O.P.(MV.)

K.V. PATHROSE, S/O. VAREETH,
KOCHILAN HOUSE, RAYONAPURAM P.O., VALLAM.

BY ADV. SRI.SUNIL CYRIAC

RESPONDENTS: RESPONDENTS 1,2 & 3 IN O.P.(M.V.).

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1. P.P. SHAJI, PRATHANDEL HOUSE,
ENANELLORE P.O., KALAMBOOR, MUVATTUPUZHA.

(*) 2. KISHORE, S/O. KARUNAKARAN,
PAREPARAMBIL HOUSE, KOTTAYATHUPARA BHAGAM,
KODUNGAMANGALAM KARA, KUREEKKADU VILLAGE.(REMOVED)

3. THE ORIENTAL INSURANCE CO.LTD.,
DIVISIONAL OFFICE, SHAAN COMPLEX, 1ST FLOOR,
BAZAR ROAD, MATTANCHERRY.

(*)(R2 IS REMOVED FROM PARTY ARRAY VIDE ORDER DATED 27.1.2004 IN IA NO.2591/2004)

R3 BY ADV. SRI.M.JACOB MURICKAN

THIS MOTOR ACCIDENT CLAIMS APPEAL HAVING BEEN FINALLY HEARD ON 10/08/2007, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

K. PADMANABHAN NAIR ,J

M.A.C.A.No.388 of 2003

Dated, this the 10th day of August, 2007

JUDGMENT

The claimant in O.P.(MV) No.61/1997 on the file of the Motor Accidents Claims Tribunal, Perumbavoor is the appellant. Appeal is filed challenging the quantum of compensation awarded to the appellant. Appellant filed Original Petition claiming compensation for the injuries sustained by him in a motor vehicle accident on 10.9.1996. The case of the appellant was that he was riding a bicycle and when he reached the place of occurrence a lorry bearing registration No.KL-7L-3047 driven by the second respondent in a rash or negligent manner came and hit against the bicycle causing injuries to his person. He claimed an amount of Rs.one lakh as compensation. Owner and driver did not appear and contest the matter. Insurer alone contested the matter. Negligence alleged against the driver was denied. Existence of policy was admitted. But, it was contended that the person who drove the vehicle at the time of accident was not having a valid driving licence. It was contended that there was violation of policy conditions and hence the insurer was not liable to indemnify the insured. Tribunal found that the accident occurred due to the negligence of the driver of the lorry. Tribunal awarded a compensation of Rs.34,660/- to the appellant. Insurer was directed to pay the amount and then recover it from the owner. According to the appellant the quantum of compensation awarded is very low. Hence this appeal.

2. The findings of the Tribunal that the accident occurred due to the negligence of the driver of the lorry and the appellant was entitled to get compensation have become final and conclusive. Though the appellant is challenging the finding of the Tribunal that the insurer was not liable to indemnify the insured, he had not adduced any evidence to show that the person who drove the vehicle was having a valid driving licence. So the finding of the Tribunal that the insurer should pay the compensation amount and thereafter can recover the amount from the insured does not call for any interference.

3. The only question arising for consideration is whether the appellant is entitled to get any amount as additional compensation. Appellant was paid an amount of Rs.2,500/- as treatment expenses. Evidence on record shows that the appellant sustained fracture distal phalanx of both big toes, multiple fracture ribs right side and fracture proximal phalanx of second and third toes left foot. Initially he was admitted in Sanjo Hospital, Perumbavoor and thereafter at Medical Mission Hospital, Kolenchery. So I am of the view that the Tribunal ought to have awarded Rs.3,000/- more towards treatment expenses. Appellant produced disability certificate to show that he is having disability of 7%. Tribunal took only 4% disability. Considering the nature of fractures I am of the view that the Tribunal ought to have awarded Rs.5,000/- more towards disability. I do not find any reason to interfere with the compensation awarded on other counts. The appellant is entitled to get an additional compensation of Rs.8,000/- with 6%

interest per annum from the date of petition till the date of realisation. Insurer should have to pay the amount and recover it from the owner as ordered by the Tribunal.

In the result, appeal is allowed in part. An award is passed in favour of the appellant allowing him to recover an additional compensation of Rs.8,000/- with 6% interest per annum from the date of petition till the date of realisation from respondents 1 and 3. Insurer is directed to satisfy the award and recover it from the owner by executing the award in this proceedings itself. Insurer is also directed to deposit the amount within two months from today and on deposit the appellant can withdraw the entire amount.

K. PADMANABHAN NAIR
JUDGE

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